

MAGNA CHARTA,

Made in the Ninth Year of
King HENRY the Third.

And Confirmed by
K. EDWARD the first,

IN THE
Twenty Eighth Year of his REIGN.

With some Short, but Necessary
OBSERVATIONS

FROM THE
L. Chief Just. COKE'S
COMMENTS upon it.

Faithfully Translated for the Benefit of
those that do not understand the *Latine*;
By *Edw. Cooke*, of the Middle-Temple, Esq.

L O N D O N,

Printed by the Assignees of *Richard and Edward
Atkins*, Esquires, for *Thomas Simmons*, at the
Prince's Arms, in *Ludgate-Street*, 1680.

King Henry the Third

K. EDWARD the first

IN THE
Twelfth Year of his reign

WITNESSETH
OBSERVATIONS



I. CHURCH COOKES

COMMISSIONER

Respectfully Translated for the benefit of
those that do not understand the Latin
By George Coste of the Middle Temple Esq.

LONDON
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Printed in the Year 1633

PREFACE

To all the
Common People

OF
ENGLAND.

PRefaces of late, are
grown so Ridiculous
and Impertinent for
the most part, that they ra-
ther trouble, and *Shagrin* the
A 2 Reader

A Preface.

Reader, than any ways benefit, or please him: But I will endeavour, (because some particular Reasons oblige me to present You with One) to make this as Reasonable, and easie to You as I can; and therefore shall only touch upon the Merits of this *GREAT CHARTER*.

It is a Maxime, that the
(a) *Common Law*
(a) *Plowd' Comment. 236. Wil-* hath so admeasur-
lion v. Berkly. red the Prerogatives

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tives of the KING, that they should not take away, nor prejudice the Inheritance of any; and the best Inheritance that the Subject hath, is the Law of the Realm. There is also another, no less indisputable than this, and that is, *Nil tam proprium est Imperii, quàm legibus vivere*; There is nothing more conducing to the good Weal of a State, than to live under the Oecomony of just and wholesom Laws.

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Now because the *Common Law* was not absolutely perfect of it self, it was requisite and necessary that what was wanting, should be made up by *Statutes*, which had the common consent of the Realm, by Authority of *Parliament*: And though this was but a *CHARTER*, bearing Date the Tenth day of *February*, in the Ninth Year of King *Henry* the Third: Yet it was afterwards *Established* by
Autho-

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Authority of Parliament,
in the 28th Year of King
Edward the First; and so En-
tered into the *Parliament Roll*.

My Lord *Coke* says, It
had not its Name of *Great*
CHARTER, from the
Greatness of it in *Quantity*;
for there were several *Volu-*
minous Charters, longer than
this: But it was so called, in
respect of the *Great Impor-*
tance, and *Weightiness* of the
Matter; as *Charta de Foresta*,
is called, *Magna Charta de*

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Foreſta, for the ſame Cauſe;
and both of them are called,
Magnæ Chartæ Libertatum
Angliæ; i. e. The Great
Charters of the Liberties of
England; and upon great rea-
ſon too, *Quia liberos faciunt*,
becauſe they make us Free.

The Ends of making this
GREAT CHARTER
are, what ought to be the
true Ends of all Acts of *Par-*
liaments; to wit, 1. *The*
Honor of God. 2. *The*
Health of the King's Soul.
3. *The*

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3. *The Exaltation of Holy Church.* And, 4. *The Amendment of the Kingdom.*

As for the Quality of it; It is, for the most part, Declaratory of the Principal Grounds of the Fundamental Laws of *England*: And for the Residue, it is Additional, to supply some Defects of the Common Law; and it was no New Declaration: For King *John*, in the 17th Year of his Reign, had granted the like; as you
may

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may see in *Matth. Paris*,
246, 247, 248. Which was
also called, *Magna Charta*.

In the 25 *Edw. I. c. I.*
called, *Confirmationes Char-*
tarum, the Confirmations of
Charters; it was adjudged
in *Parliament*, that this
GREAT CHARTER,
and the *Charter of the Fo-*
rests, are to be holden for
the Common Law; that is,
the Law common to all:
And that both the said *Char-*
ters are in Amendment of
the

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the Realm; that is, to amend the great Mischiefs, and Inconveniencies, which oppressed the whole Realm, before the Making of them. And it is there said likewise, (a Clause worthy to be written in Golden Letters, as my Lord Coke says) *That our Justices, Sheriffs, Mayors, and other Ministers, who under Us, have the Laws of our Land to guide them, shall allow the said CHARTERS in all their Points, which in*
any

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any Plea shall come before them
in Judgment.

It was one of the Principal Causes of the Summoning of that Parliament, at Marlebridge, in the 52 of H. 3. to Establish these two Charters. Says the Statute, c. 5. *Magna Charta in singulis suis Articulis teneatur, tam in his quæ ad Regem pertinent, quam quæ ad alios. Similiter Charta de Foresta, & contravenientes per Dominum Regem, cum convicti fuerint,*

gra-

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graviter puniantur: The
GREAT CHARTER
shall be kept and observed in
every one of its Articles; as
well in those which respect
the KING, as those which
respect others: and so like-
wise, the *Charter of the For-
est*, and all Opposers of
them, as soon as ever they
shall be Convicted, shall be
grievously punished by our
Lord, the King. And there-
fore, Writs against the
Breakers of them, shall be
free-

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freely granted, to encourage all such as would prosecute them.

I hope then, we need have no cause to fear, that this our **MAGNA CHARTA**, can be any ways infringed, and so our Liberties and Properties weakned, and intrenched upon: For, as you may see in the immediate Superior Paragraph, all imaginable Pretence of Prerogative against **MAGNA CHARTA**, is taken away.

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I was the rather induced to this Work, because I find it so generally and mainly insisted on by all Degrees of Persons : And, I am confident, scarce one of a hundred of the Common People, know what it is; it being never yet presented to them, after this Manner: Therefore, I cannot imagine, but that particularly all such (for to such only, I chiefly design this) would be well pleased, to see that *English-*
ed,

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ed, and thus explained to them, which they have ever had so great a Deference and Value for.

Farewel.

MAGNA

MAGNA CHARTA

Made in the Ninth Year of
King HENRY the Third.

WITH

Some short, but necessary Observations
on this CHARTER, taken
out of my Lord Coke's Second In-
stitutes.

(a) **H**ENRY, by the Grace of
God, King of England,
Lord of Ireland, Duke
of Normandy and Aquitaine, and Earl
of Anjou; (b) To all Archbishops,
Bishops, Abbots, Priors, Earls,
Barons, Sheriffs, Provosts, Offi-
cers; and to all Bailiffs, and other
our Faithful Subjects, which shall see
B this

this present CHARTER, Greeting.

Know ye, that We, (c) unto the Honour of God, and for the Salvation of our Souls, &c. and to the Advancement of Holy Church, and the Amendment of our Realm, (d) of our free and mere Will, have Given and Granted to all Archbishops, Bishops, Abbots, Priors, Earls, Barons, and to all free-Men of our Realm, these Liberties following, to be kept in our Kingdom of England for ever.

(a) Concerning the Styles of the Kings of *England*, both before and after this King, and of their Alterations; see *First Institutes*, §. 1.

(b) This, or the like Direction, was used by this King, and his Progenitors; so did E. 1. E. 2. E. 3. K. R. 2. in his Letters Patents, used a more general one, viz. *To all Persons, to whom these present Letters shall come, &c.* which is used to this Day, saving in

In *Charters of Creation of Dignities*: And then the Directions to this Day are, *To all Archbishops, Bishops, Dukes, Marquesses, &c.* and with *his Testibus* in the End.

(c) Four Causes of making this Great Charter: 1. The Honour of God. 2. The Health of the King's Soul. 3. The Exaltation of Holy Church. 4. Amendment of the Kingdom.

(d) The adding of these Words, was because King John made the like Charter in Effect, Anno 17. And thinking afterwards to avoid it, pretended it was made by Durels.

This Great CHARTER is divided into Thirty eight Chapters.

CHAP. I.

IMprimis, (a) We have granted to God, and by this our present Charter, have confirm'd for Us, and (b) our Heirs for ever, That (c) the Church of England shall be free, and shall have all her (d) whole Rights and (e) Liberties inviolable. We have granted also, and given to (f) all the Free-Men of our Kingdom, for Us, and our Heirs for ever, these (g) following Liberties; to have, and to hold, to them and their (h) Heirs, of (i) Us, and our Heirs for ever.

(a) When a Thing is granted for *God*, the Law says, It is granted to *God*; and what is granted to his *Church*, for his Honor, &c. is granted for and to *God*. *Quod datum est Ecclesie, datum est Deo*.

(b) These

(b) These Words were added, because that this Great *Parliamentary-Charter* might Live, and take Effect in all Successions of Ages, for ever.

By the Law of *Poynings*, made by the Authority of *Parliament* in *Ireland*, Anno 11. H. 7. *Magna Charta*, as indeed all the Laws and Statutes of *England* before that time, does extend into *Ireland*.

(c) That is, That all Ecclesiastical Persons within the Realm, their Possessions and Goods shall be freed from all unjust Exactions and Oppressions; but yet, should yield all Lawful Duties, either to the King, or any of his Subjects.

(d) i. e. That all Ecclesiastical Persons shall Enjoy all their Lawful Jurisdictions, and other their Rights wholly, without any Diminution or Substraction whatsoever.

(e) Liberties here are taken in two Senses. 1. For the Laws of *England*; so called, because they make Free. 2. For Priviledges held by *Parliamentary-Charter*, or Prescription, more than ordinary.

(f) These Words do include all Persons, Ecclesiastical and Temporal, Incorporate, Politick or Natural; nay, they extend to Villains: For they are accounted Free against

all Men, saving against their Lords,

(g) This word [*Following*] restrains Liberties to the *Thirty eighth* Chapter of this Charter.

(b) At this time [*Heirs*] were taken for Successors, and Successors for Heirs.

(i) To intimate, that all Liberties, at the first, were derived from the Crown.

CHAP. II.

If any of our (a) Earls or (b) Barons, or any other, who (c) hold of Us in Chief (d) by Knights-Service, Dye; and at the Time of his Death, his Heir shall be (e) of full Age, and oweth to Us (f) Relief, he shall have his Inheritance by the Old Relief: That is to say, (g) the Heir or Heirs of an Earl, for a whole Earldom, by One hundred Pound; the Heir or Heirs of a Baron, for a whole Barony, by One hundred Marks; the Heir or Heirs of a Knight, for one whole Knights-Fee, One hundred Shillings, at the utmost: And he that hath less, shall give less; according to the old Custom of the Fees.

See Old. Nat. Brev. fo. 94.

3. Bullstrode. 325.

Doctor and Student. 14.

B 4

Fitz.

Fitz. Nat. Brev. fo. 254. B. 263. B.
Hobart. 46.

Alt. Stat. 12. Car. 2. cap. 24.

(a) At this time there was never a Duke, Marquess or Vicount, in England: The first Duke, created since the Conquest, was Edward the Black Prince, in 11 E. 3. The first Marquess was Robert de Vere, Earl of Oxford, in 8 An. R. 2. and he created Marquess of Dublin in Ireland. The first Vicount on Record, and that Sate in Parliament by that Name, was John Beaumont, in the 18 An. H. 6. created Vicount Beaumont.

(b) *Barons.* It is to be understood, that if the King give Land to one, and his Heirs, to hold of the King, *per servitum Baronie*; he is no Lord of Parliament, until called by Writ to the Parliament.

These Earls and Barons have Offices and Duties annexed to their Dignities, of great Trust, for two ends: 1. *To consult, in time of Peace.* 2. *To defend the King and Country, in time of War.* And therefore, they wear two Ensigns, to put them in mind of their Duties: 1. An Honorable and long Robe of Scarlet, to resemble Council; in respect

spect whereof, they are counted in Law, *The King's great Council*. 2. They are girt with a Sword, ever to be ready to defend their King and Country.

(c) It appears in the Books, that he that holds of the King in Chief, must not only hold of the Person of the King: But the Tenure must be created by the King, or some of his Predecessors, Kings of this Realm, to defend his Person and Crown; otherwise he shall have no Prerogative, by reason of it; For no Prerogative can be annexed to a Tenure created by a Subject. See the first *Instit.* §. 103. 47. E. 3. 21. Fitz. Nat. Brev. 5.

(d) By Knight-Service: See for this, the first *Instit.* §. 103. 112. 154. 157. 126, 127.

(e) Of full Age, *i. e.* of the Age of 21. 1 *Instit.* §. 104.

(f) *i. e.* The *Antient Relief*, which was certain at the Common-Law, [*Relief* is derived from the Latine *Relevare*, which is to ease, by Abatement, &c.] the Fourth Part of the Yearly value.

(g) See the first *Instit.* §. 1.

Note, That of antient Time, every Earldom and Barony were holden of the King in Chief; which proves, that both the Dignities of the Earl and Baron, and the Earldom

dom and Barony, were derived from the Crown.

And the Fourth part of the Yearly value of an Earldom, a Barony, and the Living of a Knight, was the Antient Relief here spoken of; as a Knights-Living was esteem'd at Twenty Pound *per Annum*: and therefore, to pay Five Pound, and so upwards.

This Chapter of *Magna Charta*, is but a Declaration and Restitution of the antient Common-Law.

CHAP. III.

BUT if the (a) Heir of any such be within Age, his Lord shall not have the Ward of him, nor of his Land, before he hath taken of him (b) Homage. And after such an Heir hath been in Ward, when he is come to full Age; that is to say, the Age of One and twenty Years, he shall have his Inheritance without Relief, and without Fine: So that, if such an Heir being within Age, (c) be made a Knight; yet notwithstanding, his Land shall (d) remain in the Custody of his Lords, unto the aforesaid Term.

Fitz. Nat. Brev. fol. 269.

Alt. 12. Car. 2. cap. 24.

(a) *Heir*: This Statute is only to be intended of an Heir Male; whereof *Heir* is derived:

derived: And who is an Heir, see 1. *Instit.* §. 1, 2, 3. *Customier de Normandy*, 99. and the Exposition on the same.

(b) See 1. *Instit.* § 85.

The Statute means, that the Homage should be taken of the Heir himself, for his Benefit; as by the old Books; which see 2d. *Instit.* fol. 11. lit. a. *Et contemporanea Expositio est fortissima in lege.* Homage is of an higher Nature than Escuage, to divers Purposes. 1. For Homage binds to Warranty, Escuage not. 2. Homage is so Solemn, that it cannot be done again, as long as the Tenant that made it Lives: But Escuage may be given every other Year. 3. One within Age may do Homage, but he cannot do Fealty; because that is to be done upon Oath. *Quod nota. Brac.* l. 2. fol. 79. 1. *Instit.* l. 2. c. Homage and Fealty.

(c) If the King create the Heir within Age, a Duke, Marquess, Earl, Vicount, or Baron; yet he shall remain in Ward for his Body: But if the Heir of a Duke, &c. be made a Knight, he shall be out of Ward for his Body. If the Heir in Ward be Created *Knight of the Garter, of the Bath, Banneret, or Batchelor*, he shall be out of Ward for his Body; for he is a Knight, and somewhat

more;

more; and the Statute speaks generally: And therefore, within the Words and Meaning of this Law, and the Sovereign of Chivalry hath adjudged him able to do Knights-Service.

Be made: This proves, that Knight-hood ought to be by Creation, or Making, and cannot be by Descent.

(d) [*Remain in the Custody of his Lords*] implies, that this Statute is only to be understood, where the Heir, after he be in Ward is made Knight within Age: For when the Heir apparent is made Knight within Age, in the Life of the Ancestor, and the Ancestor dies, his Heir within Age, he shall be out of Ward both for Body and Land.

CHAP. IV.

THE (a) Keeper of the Land of such an Heir, being within Age, shall not take of the Lands of the Heir, but (b) Reasonable Issues, (c) Reasonable Customs, and Reasonable Services; and that (d) without Destruction, and Waste of his Men, and his Goods. And if we (e) commit the Custody of any such Land to the Sheriff, or to any other, which is answerable to us for the Issues of the same Land, and he make Destruction or Waste of those Things that he hath in Custody, we (f) will take of him Amends and Recompence therefore; and the Land shall be committed to two lawful and discreet Men of that Feé, who shall answer unto us for the Issues of the same Land, or unto him whom we will Assign. And

if (g) we shall give or sell to any Man, the Custody of any such Land, and he therein do make Destruction or Wastte, he shall (h) lose the same Custody. And it shall be assigned to two lawful and discreet Men of that Fee; who shall also in like manner be answerable to us, as afore is said.

Vid. Glocef. cap. 5.

Westmin. 1. cap. 21.

(a) He is not only to keep and preserve the Lands and Tenements of the Ward, committed to his Custody, in safety; but also to educate, and bring up his Ward ver-
tuously, and to advance him in Marriage, without Disparagement. See 1. Instit. §. 103. 4. Instit. Cap. *Courts of Wards and Li-
veries.*

(b) The Rents and Profits issuing out of the Lands or Tenements of the Ward; which must be taken by the Guardian or Keeper, in Reasonable manner: And therefore, *Reason-
able* is added, for nothing *Unreasonable* is al-
lowed by Law.

(c) Things

(c) Things due by Custom or Prescription, and Appendent or Appurtenant to the Lands or Tenements in Ward; also, the Reasonable Customs, Fines, &c. of Tenants in Villenage, or by Copy of Court-Roll, where Fines be incertain.

How and by whom this said *Reasonableness* in the Cases aforesaid, may be Tried; see 1. *Instit.* §. 69.

(d) For Destruction and Waste; see 1. *Instit.* §. 67. and *Stat. Glouces.* c. 5.

(e) Here the Committee of the King, is taken for him, to whom the King committed the Custody of the Land to one, or more.

(f) This may be upon an Office found, or by Writ directed to the Sheriff, to this Effect: *Quia datum est nobis intelligi, &c.*

(g) In this Case, the King granteth or selleth the very Custody it self; so as the Grantee or Vendee, becomes Guardian in Fact: And this Distinction between the Committee and Grantee, was by the Common Law. See *Glanvil. lib. 7. cap. 10.*

If the Committee or Grantee do waste, and the King during the Minority takes no Amends, the Heir shall have an Action of Waste, by order of Common Law; and seeing the Wardship cannot be lost, and the

Waste

Waste being to the Heirs Disherison, ought not to be unpunished: Therefore, the Heir shall recover Treble Damages; for that Penalty is annexed to the Action of Waste. But if the King do take Amends, then the Heir at full Age, shall have no Action of Waste.

(b) That is understood of the Land, and not of the Body.

But Note, Since this Great Charter, divers other Statutes against Waste and Destructions, in the Lands of Wards, have been made.

At the Making of this Statute, the King had not any Prerogative in the Custody of the Lands of *Idiots*, during the Life of the *Idiot*; but the Guardianship of *Idiots*, was to the Lords, and others, according to the course of the Common Law: And this Prerogative was given to King E. 1. before *Britton* wrote, by some Act of Parliament, not now Extant. And it appears by the *Mirror of Justices*, agreeing with *Fleta*, that this Prerogative was granted by Common Assent. *Beverly's Case*, lib. 4. fo. 126.

CHAP. V.

The Keeper, so long as he hath the Custody of the Land of such an Heir, shall keep up the Houses, Parks, Warrens, Ponds, Mills; and other Things pertaining to the same Land, with the Issues of the said Land: And he shall deliver to the Heir, when he cometh to his full Age, all his Land sowed with Plows, and all other Things, at the least, as he received it. All these Things shall be observed in the (a) Custodies of Archbishopricks, Bishopricks, Abbeys, Priories, Churches and Dignities, vacant, which appertain to us; except this, that such Custody (b) shall not be Sold.

Stat. 3 E. 1. 21.

Stat. 36 E. 3. 13.

Old Nat. Brev. 37.

(a) The Custody of the Temporalities of every Archbishop, and Bishop, within the Realm, of such Abbeyes and Priories, as were of the King's Foundation, after the same became void, belong'd to the King, during the Vacation thereof, by his Prerogative, as Founder: And this belongs to the King being *Patronus & Protector Ecclesie*, in so high a Prerogative incident to his Crown, as no Subject can claim the Temporalities of an Archbishop or Bishop, when they fall, by Grant or Prescription.

(b) *Shall not be sold. Fleta, lib. 1. cap. 11. says, Vendi non debent, nec legari*: Yet the King may commit the Temporalities of them, during the Vacation; as by the *Statute of 14 E. 3.* appeareth.

CHAP. VI.

Here shall be Married without
Disparagement.

This is an Antient Maxime of the Com-
mon Law: See more hereof in 1. *Insti.*
§. 107, 108, 109.

CHAP. VII.

A Widow, after the Death of her Husband, incontinent, and without any difficulty, shall (a) have her Marriage, and her (b) Inheritance; and shall give nothing for her Dower, her Marriage, or her Inheritance, which her Husband, or she, held the Day of the Death of her Husband: And she shall (c) tarry in the Chief House of her Husband, by 40 Days after the Death of her Husband: (d) within which Days, her Dower shall be assign'd her, (if it were not assigned her before) or that the House be a (e) Castle. And if she depart from the Castle, then a (f) Competent House shall be forthwith provided for her; in the which she may honestly dwell, until her Dower be to her assigned, as aforesaid: And she shall, in the mean-time, have her (g) reasonable Estovers of the Common. And for her Dower, shall

C 3

shall be assigned unto her, the Third Part of all the Lands of her Husband, which were his, during Coverture; except she were Endowed of less, at the Church door. (h) No widdow shall be distrained to Marry her self, so long as she shall have a mind to Live without a Husband: But yet she shall find Surety, that she shall not Marry without our License and Assent, if she hold of Us, nor without the Assent of the Lord, (i) if she hold of another.

Prerogativa Regis, cap. 4.

Stat. 20 H. 3. 1.

(a) That is, To Marry where they will without any License, or Assent of their Lords.

(b) Without any thing to be given to them.

(c) This is called her Quarentine; and if the Widdow be with held from her Quarentine, she shall have her Writ *De Quarentena habenda*, to the Sheriff, which reciting this Statute, is in Nature a Commission to him. By force of which Writ the Sheriff

riff may make Process against the Defendant, retornable within two or three days, &c. And may, and ought (if no just Cause be shew'd against it) speedily to put her in Possession, because her Quarentine is but for Forty days:

Widow, &c. Tarry, &c.] Therefore, if she Marry within the Forty days, she loses her Quarentine: For her Widowhood is past, and she has provided for her self; and her Quarentine is appropriated to her Widows Estate.

(d) This shews, how speedily Dower ought to be assigned; that so the Widow might not be without Lively-hood. *Britton, cap. 103.*

The Day whereon the Husband dieth, shall be the first Day; so that there is but Thirty nine after.

(e) This is intended of a Warlike Castle, maintained for the necessary Defence of the Realm; For, as for that maintained for Habitation of the Owner, she is not to have her Quarentine.

(f) This must be a House, whereof she is Dowable.

(g) That is, Sustenance: Some say, she can't kill the Oxen of her Husband, whiles she remains in the House. But the Register sayes, *Quod interim habeant rationabilia tsto-*

veria de bonis eorumque maritorum; which seems to Expound this Branch, Reg. 175.

When *Estovers* are Restrained to *Woods*, it signifies *House-boot*, *Hedge-boot* and *Plow-boot*.

(b) This is meant of Widows-Tenents, in Dower of Lands holden of the King, by Knights-Service in Chief; and thereupon, she is called the *King's Widow*. And if she Marry without License, she shall pay a Fine of the Value of her Dower, by one Year.

The Reason is, *Ne forte capitalibus inimicis Domini Regis maritentur*: Old Readers say this, Lest marrying Strangers, the Treasure of the Realm might be carried out: Others, That because upon the Assignment of her Dower, she is sworn in Chancery, *That she shall not Marry without License*; and therefore, *if she doth, contrary to her Oath, she shall pay a Fine*. Others, That it is a Contempt, to Marry without the King's License, and against this Statute. And therefore, &c.

If the Queen, being the Widow of the King, be Endowed, and Marry without the King's License; because she is Endowed of the Seisin of the King himself, she is out of this Statute. But by the Parliament, in *Anno 6 H. 6.* 'tis Enacted by King, Lords Temporal, and Commons, That no Man should
Contract

Contract with, or Marry himself to any Queen of *England*, without the Special License or Assent of the King, on pain to lose all his Goods and Lands. To which Act, the Bishops, and other Lords Spiritual, gave their Consent; as far forth, as the same swerved not from the Law of *God*, and of the *Church*; and so, as the same imported no deadly Sin.

(i) This is meant, where such a License of Marriage, in case of a common Person, was due by Custom, Prescription, or Special Tenure: And this Exposition is approved by constant and continual Use and Experience.
1. *Instit.* §. 174.

CHAP. VIII.

BUT (a) We, or Our (b) Bailiffs, shall not (c) seize any Land or (d) Rent for any Debt, so long as the present Goods and Chattels of the Debtor, shall be sufficient to pay the Debt, and the Debtor himself be ready to satisfy therefore. Neither shall the (e) Pledges of the Debtor be distrained, so long as the Principal Debtor be sufficient for the Payment of the Debt : And if the Principal Debtor fail in the Payment of the Debt, not having where withal to pay, or (f) will not pay where he is able, the Pledges shall answer for the Debt ; and if they (g) will, they shall have the Lands, and Rents of the Debtor, until they be satisfied of that Debt, which they before paid for him : Unless the Principal Debtor

can

can shew himself acquitted against the said Sureties.

See CH A P. 18. 33 H. 8. c. 39.

(a) This being spoken in the Politick Capacity, extends to the Successors; for so *Rex nunquam moritur*.

(b) The Sheriff, and his Under-Bayliffs: And to this Day, the Sheriff uses this, in his Returns, *Infra balivam meam*, for *Infra comitat*, &c.

(c) By Order of Common Law, the King, for his Debt, had Execution of the Body, Lands, and Goods of the Debtor: This is an Act of Grace, and restrains the Power the King had before.

(d) For Rents, see the first *Instit. lit. lib. 2. cap. 12*. To which add, 1. Rents of Assize, which are the certain Rents of Free-holders, and antient Copy-holders; because they be assized and certain, and distinguished from Farm Rents for Life, Years, or at Will, variable, and uncertain. 2. White Rents, or commonly called Quit Rents, because paid in Silver. 3. Black Mail, or Black Rents, to distinguish them from White Rents. 4. *Redditus Resoluti*, Rents issuing out of the Manors,

nors, &c. to other Lords, &c. Fee-Farm. For this kind of Rent, see *Glocef. cap. 8.*

(e) As Pledges, or Sureties to keep the Peaces. Pledges for a Fine to the King, upon a Contempt, &c. are within this Branch; But otherwise, of Mainpernors; as appears by *Glanvil*, to be Common Law, before this Act.

(f) This must be understood, when the Principal is able, and yet his Ability cannot be made to appear, being in Money, Treasure, or the like; or in Debts owing him, which he conceals, and will not pay.

(g) Some have said, That upon these Words, the Writ *de Plegiis Acquitandis* is grounded: and seeing in this Statute, no mention is of a Deed, the Pledges shall have that Writ without any Deed. And if they have any Deed, Covenant, or other Assurance, for their Indemnity, their Remedy is at Common Law. But it appeared by *Glanvil*, that this was the Common Law. *Lib. 10. cap. 4. & 5.*

CHAP. IX.

THE City of LONDON shall have all the Old Liberties and Customs, which it hath been used to have. Moreover, we will, and grant, that all other Cities, Boroughs, Towns, and the Barons of the Cinque-Ports, and all other Ports, shall have all their Liberties, and Free Customs.

Articuli super Chartas, c. 7.

3. Bullstrode. 2.

Cro. Car. 25 1.

The Mirror says, c. 5. §. 2. This Chapter is thus interpretable, viz. That the Citizens have their Franchises, of which they are Inherited by a Lawful Title, from the Gifts and Confirmations of Kings; and which they have never Forfeited by any Abuse: And that they have their Franchises and Customs, which are sufferable by Right, and not contrary to Law. And

And this Interpretation of London, is to be understood of the Cinque-Ports, and other Places. This agrees with our latter Books.

Maxim. A Man cannot claim any thing by Custom or Prescription, against a Statute, unless the Custom or Prescription be saved by another Statute. For example, They of London, claim by Custom, to give Lands without License, to Mortmain; because this Custom is saved and preserved, not only by this Chapter of *Magna Charta*, but by divers other Statutes: And so of the rest. See more of London in the Fourth Instit.c. *Of the Courts of the City of London.*

CHAP. X.

NO (a) Man shall be distrained to do (b) more Service for a Knight's Fee, nor for any Free-hold, than therefore is due.

This was the Antient Law of England; Glanvil l. 12. c. 9, 10. Nor was the Writ of *Ne Injuste vexes*, grounded upon this Act, as appears by him. And another Antient Author, who wrote of the Antient Laws long before this Statute, mentions this Writ.

(a) If the Lord incroach more Rent of the same Nature, by the Voluntary Payment of the Tenant, he shall not avoid this Incroachment in any Avowry; but in an Assize *Cessavit*, or *Ne injuste vexes*, the Tenant shall avoid the Incroachment. — In case of a Successor, or of Issue in Tail, this Rule holds not; for they shall avoid it in an Avowry: If the Service incroached be of another Nature, the Tenant shall avoid that in an Avowry.

(b) *Mord*

(b) *More Service*] implies a greater Exaction of the same Nature: If the Incroachment of the same Nature be got by Cohercion of distress, there the Tenant shall avoid that in an Avowry.

If Incroachment be made upon a Tenant in Tail, or for Life, or any other, who cannot maintain a Writ of *Ne injuste vexes*, nor a *Contra formam Collationis*, nor other Remedy; he shall have an Action upon this Statute: For it intended to Relieve those, that had no Remedy by the Common Law.

This was the Ancient Law of England: And it was the Will of the King, that it should be so, as is expressed upon this Act, as is also in the Statute of the 1st of Edward 1. And another Ancient Author, says of the Ancient Laws long before

(a) If the Lord incroach more than of the same Nature, by the Voluntary Payment of the Tenant, he shall not avoid this Incroachment in any Avowry: but in an Action of *De Cessante* or *Ne injuste vexes*, the Tenant shall avoid the Incroachment. And this Rule is a Remedy, or, at least in Tail, the Rule holds good, for they shall avoid it in an Avowry: In the Service incroached by another Tenant, the Tenant shall avoid it in an

CHAP. XI.

(a) **C**ommon Pleas shall (b) not follow (c) our Court; but shall be holden in some Place certain.

Articuli super Chartas, c. 7.

Reg. fo. 187. V. N. B. 137. St. 28 E. 1.4.

Co. Instit. 4. Part 99. Mirror. 311, 11. Co. 75. 2. Bulstrode. 123.

Before this Statute, Common Pleas might be held in the Kings Bench; and all Original Writs returnable into the same Bench: And because the Court was held *Coram Rege*, and follow'd the King's Court, and remov'd at the King's Will, the Returns were *Ubicumq; fuerimus*, &c. Whereupon many Discontinuances ensued, great Trouble of Jurors, Charges of Parties, and Delay of Justice: Wherefore this Statute was made.

There are Pleas of the Crown, which are called otherwise, and aptly, Criminal and
D
Mortal

Mortal Pleas; and (a) Common Pleas, aptly called Civil. These latter are divided into Real, Personal, and Mixt: They are not called Common Pleas, because held by Common Persons; for the King may be Party to a Common Plea, as to a *Quare impedit*, or the like.

(b) Divers special Cases are out of this Statute, too long to be here Inserted: and therefore, I refer you to the Book it self, upon these Words, *Fol. 23.*

(c) *Our Court*] are Words collective; and not only extend to the King's Bench, but Into the Court of Exchequer. See *Articuli super Chartas*, c. 4.

CHAP. XII.

(a) **A** Ssises of Novel Disseisin, and of Mortdancestor, shall not be taken, but (b) in the Shires, and after this manner: If we be out of this Realm, (c) our Chief Justicers shall send our Justicers through every County, once in the Year; who, with the Knights of the Shires, shall take the said Assizes in those Counties: And those Things, that at the coming of our aforesaid Justicers, being sent to take those Assizes in the Counties, cannot be determined, shall be ended by them in (c) some other Place, in their Circuit. And those Things, which for the Difficulty of some Articles, cannot be determined by them, shall be referred to the Justicers of the Bench, and there shall be ended.

Reg. fol. 197. Stat. 13 E. 1. 30.

(a) Before this Statute, the Writs of, &c. were returnable either *Coram Rege*, or into the Court of Common Pleas; and to be taken there. *Glanvil*, lib. 13. c. 3. & 33. *Coram me, vel coram Justiciar' meis*. But since, they are returnable, *Coram Justiciar' nostris ad assisam, cum in partes illas venerint*.

(b) This greatly eases the Jurors, and saves the Charges of Parties and Time, so that they might follow their proper Occasions. It is a great Benefit to the Subject, to have Justice done him at Home, in his own Country.

For these Writs, see 1 *Instit.* § 234.

If an Assize be taken *in proprio comitatu*, and the Tenant plead, and after the Assize is discontinued by the *non Venu* of the Justices; this Act extends to the Assize, but not to a Re-attachment thereupon; for that the Assize was first arraign'd, and examined in the proper County.

This Act extends not to a Writ of Attaint, brought upon the Verdict of the Recognitors of the Assize. And with this *Briton* agrees, c. 97. f. 240.

An Assize is brought in the Kings Bench, then being in the County of *Suffolk*, of Lands in that County, the Tenant plead in Bar, the Plain-

Plaintiff reply, and pray the Assize; the King's Bench is removed to *Westminster*, and there the Plaintiff pray'd the Assize. This Statute is, That the Assize shall not be taken, but in the County: And now the King's Bench is in another; and the Original cannot go out of this Place: For, when a Record is once in this Court, here it must remain. Wherefore, by the Advice of all the Judges, the Assize was awarded at large, *Quia nihil dicit*; and a *Nisi prius* granted in the County of *Suffolk*, that there the Assize might be taken: A Case worthy of our Observation. But as it is said in an old Book, *Quamvis prohibetur quod Communia placita non sequantur curiam nostram non sequitur propter hoc, quin aliqua placita singularia sequantur Dominum Regem*: As you may see an Excellent Case there, *Fol. 25.*

(c) This Chief Justicer, when the King is out of the Realm, is thus described by *Ockham*, *Rege extra Regnum agente, brevia dirigebantur sub nomine presidentis Justiciarii, & Testimonio ejusdem*. He is Constituted by Letters Patents, to be *Custos sive Gardianus Regni*, and for his Time, is *Prorex*: Such as was *Edward*, Duke of *Cornwal*, 13 E. 3. &c. And this Statute is intended of such a Lieutenant, or Keeper of the Kingdom; For it

is said, They shall name, and send Justices by Authority under the Great Seal, under their own *Teste*; which none can do but the King himself, if he be present, or his Keeper, &c. if, as this Act says, he be *Extra Regnum*. And this Lieutenant, or Keeper of the Kingdom, was called *Capitalis Justiciarius*, before this Act, *Glan. l. 12. c. 25.*

(d) This is taken largely and beneficially, for they may not only make Adjournment before the same Justices, in their Circuit; but also to *Westminster* or *Serjeants-Inn*, or any other Place out of their Circuit, by the Equity of this Statute.

Though the Statute only speaks of an Adjournment in an Assize of *Novel Disseisin*, &c. yet a Certificate of an Assize is within this Statute.

CHAP. XIII.

Affizes of Darreine Presentment shall be always taken before our Justicers of the Bench, and there shall be determined.

Reg. fol. 30. Stat. 13 E. 1. 30.

It appears by *Glanvil* l. 13. c. 16, 18, 19. before this Statute, this Writ was returnable, *Coram me, vel Justiciar' meis*. The Reason of this Act was for Expedition, for doubt of the Laps.

By *W. 2.* 'tis provided, that Justices of *Nisi prius*, may give Judgment in an Affize of *Darreign Presentment*, and *Quare Impedit*,

CHAP. XIV.

(a) **A** Fre^r. Man shall not be (b) A-
 merced for a small Fault, but
 after the manner of the Fault; and
 for a great Fault, according to the
 Greatness of the Fault, (c) saving to
 him his Contenement; and a Merch-
 ant likewise, saving to him his
 (d) Merchandize: and any other
 (e) Villein than ours, shall be in
 like manner Amerced, saving his
 (f) Tainage, if he fall into our
 Mercy. And none of the aforesaid
 Amercements shall be assessed, but by
 the Oath of Honest and Lawful Men,
 of the Vicinage. (g) Earls and
 Barons shall not be Amerced, but by
 their (h) Peers, and according to
 the manner of their Offence. No (i) Ec-
 clestiaſtical Person shall be Amerced af-
 ter the Quantity of his Eccleſiaſti-
 cal

cal (k) Benefice; but after his Lay-
Tenement, and after the Quantity
of his Diffence.

(a) Here he is taken for a Free-holder, as it is in the *Venire fac.* where *Duodecim Liberos, &c. Homines*, are taken for Freeholders; as appears by this Act, which says, *Salvo contentamento suo.* — This *Liber homo* extends as well to Sole Corporations, as Bishops, &c. as to Lay-Men: but not to Corporations aggregate of many; as Mayor, and Commonalty, and the like: For they can't come under these Words, *Liber homo, &c.*

(b) This Act extends not to Fines imposed by any Court of Justice: What Amerciaments are, and whereof the Word comes, see Co. 8. Rept. fol. 39, 40. *Gresslies ca.* This Statute in some Cases of Amerciaments, is to be intended of private Men, and not of Amerciament of Officers, or Ministers of Justice.

Glanvil says, This Act was made in Affirmance of the Common Law. But the Writ, *De Moderata Misericordia*, is grounded on this Statute; for it recites the Statute, &c.

(c) For the Word *Contentement*, you shall read it in *Glanvil*, *Ne quid de suo honorabili*
Con-

Contenemento amittet, l. 9. c. 11. and Bracton, Salvo Contenemento suo, lib. 3. fol. 116.

For the Signification, *Contenement* signifies his *Countenance*; which he hath together with, and by reason of his Freehold: And in this Sense, the Statute of 1 E. 3. c. 4. Stat. 2. and *Old. Nat. Brev.* use it. Where *Countenance* is used for *Contenement*, the Armour of a Souldier, and the Books of a Scholar, are their Countenances.

(d) For Trade and Traffick is his Liveliness, and the Life of the Common Wealth; wherein the King, and every Subject hath Interest.

(e) *Villein* here is taken for a Bond-Man, *Nativus de Sanguine*, or *Servus*. A *Villein* is free to Sue or be Sued, by, and against all Men, saving his Lord.

(f) *Wainage* is the Countenance of a *Villein*; but yet the Lord may take it at his Pleasure.

(g) Though this Act be in the Negative, yet long Usage has prevailed against it: For the Amercement of the Nobility is reduced to Certainty, viz. a Duke, Ten pound; an Earl, Five pound; a Bishop, who hath a Baron, five pound. In the *Mirror* 'tis said, The Amercement of an Earl was an Hundred pound, and of a Baron a Hundred Marks.

'Tis said, a Bishop shall be Amerced for an Escape, an Hundred pound; a Jaylor, for the negligent Escape of a Felon-attaint, an Hundred pound, and of a Felon-indicted only, Five pound.

If a Noble-man, and a Common-man joyn in an Action, and be Nonsuit, they shall be severally Amerced; the Former, at an Hundred Shillings; and the Common-person, according to the Statute: Therefore, when the Noble-man is Plaintiff, 'tis policy rather to discontinue the Action, than be Nonsuit.

(b) That is, by their Equals.

(i) For Ecclesiastical Persons, and their Diversities, and Degrees, see 1. *Instit.* 93. B.

(k) *Benefice*] is a large Word, and taken for any Ecclesiastical Promotion, or Spiritual Living whatsoever.

Here's a great Priviledge of the *Church*, That if an Ecclesiastical Person be amerced, (though Amercements belong to the King) yet he shall not be amerced, but only in respect of his Lay-Fee; not of his Spiritual Promotion, or Benefice.

CHAP. XV.

NO Town, nor Free-man, shall be distrain'd to make Bridges, nor (a) Banks; but such as of Old Time, and of Right have been accustomed to make them in the Time of King Henry, our Grand-Father.

(a) *Bank* is here the *Extrema & eminentior terra ora, quam fluvius utrinque alluit.*

The making of Bulwarks, Fortresses, and such Things, was not forbid by this Act; because they could not be Erected, but either by the King himself, or by Act of Parliament.

CHAP. XVI.

NO Banks shall be defended from henceforth, but such as were in Defence, in the Time of King Henry, our Grand-father, by the same Places; and the same Bounds, as they were wont to be in his Time.

That is, no Owner of the Banks of Rivers shall so appropriate, or keep the Rivers several to him, to defend or bar others, either to have Passage, or Fish there; otherwise than they were used in the Reign of *H. 2.*

This Statute the *Mirror* says, *cap. 5. §. 2.* is now out of use.

CHAP. XVII.

ND || Sheriff, + Constable, & Cheator, * Coroner, nor (b) any other our Bailiffs, shall hold Pleas of our Crown.

Mirror, 313.

One Mischief before this Act, was, That none of them here named, could command the Bishop of the Diocese, to give the Delinquent his Clergy, where he ought to have it: For as *Bracton* says, *Nulius alius preter Regem possit Episcopo demandare*, &c. And herewith agreeth our other old and late Books.

(b) By these Words is comprehended Judges, or Justices of any Courts of Justice. And though it be provided by the Ninth Chapter, That the Barons of the Cinque-Ports and all other Ports, shall have all their Liberties and Free-Customs: yet it is understood of such Liberties and Customs only, as are mentioned afterwards in the same Statute, by express Words.

Words taken away, and resumed to the Crown. And therefore, if the Mayor and Barons of the Five Ports, had Power before this Act, to hold Pleas of the Crown; yet by this Act, and this Chapter, they are abrogated and resumed.

¶ For Sheriff, see 1. Instit. §. 234. 248.

† Is here taken for Constable of a Castle, from the word *Castellanus*; and *Castellani* were Men in antient Times, of Account and Authority; and for Pleas of the Crown, &c. had the like Authority within their Precincts, as the Sheriff had within his Bailwick, before this Act: and they commonly sealed with their Portraiture on Horsback. Regularly every Castle contains a Mannor, so that every Constable of a Castle, is Constable of a Mannor.

See for the word *Constable*, 1. Instit. §. 379.

* He is called so, because he is an Officer of the Crown, and hath Conusance of some Pleas; which are called *Placita Corone*.

By the antient Law, he ought to be a Knight; Honest, Loyal and Sage: *Et qui melius sciat, & possit officio illi intendere.*

If you ask, What Authority he had? The same he hath now, in case when any Man come to violent or untimely Death: *Super visum corporis*, &c. Abjurations and Outlawries,

ries, &c. Appeals of Death by Bill, &c. This Authority of the Coroner, viz. the Coroner solely to take an Indictment, *Super visum corporis*; and to take an Appeal, and to enter the Appeal: and the Count remaineth to this Day. But he can proceed no further, either upon the Indictment, or the Appeal, but to deliver them over to the Justices. And for the further Authority of the Coroner in High Treason, see 19 H. 6. fo. 47. and consider well thereof.

CHAP. XVIII.

If any that holds of us Lay Fee, do Dye, and our Sheriff, or Bailiff, do shew our Letters Patents of our Summons for Debt, which the Defunct did owe to us: It shall be Lawful to our Sheriff, or Bailiff, to attach and intol all the Goods and Chattels of the Defunct, being found in the said Fee, to the Value of the same Debt, by the Sight and Testimony of Lawful Men; so that nothing thereof shall be taken away, until we be clearly paid off the Debt. And the Residue shall remain to the Executors, to perform the Testament of the Defunct. And if Nothing be owing to us, all the Chattels shall go to the use of the Defunct; || saving to his Wife, and Children, their Reasonable Parts.

Stat. 33 H. 8. c. 39.

Three Things here are observable : 1. The King by his Prerogative shall be preferred, in satisfaction of his Debt, by the Executors, to any other. 2. If the Executors have sufficient to pay the King's Debt, the Heir that is to bear the Countenance, and sit in the Seat of his Ancestor, or any Purchaser of his Lands, shall not be charged. 3. If nothing be owing to the King, or any other, all the Chattels shall go to the use of the Dead; that is, to his Executors, or Administrators; saving to his Wife, and Children, their Reasonable Parts.

|| The Nature of a Saving regularly, is to save a former Right, and not to give, and create a New : And therefore, where such a Custom is, that the Wife and Children shall have the Writ, *De Rationab. parte Bonorum*, this Act saveth it. And this Writ lies not without a particular Custom ; for it is grounded upon a Custom.

The Administrators of a Man that dyes Intestate, or Executors of any that make no Disposol of his whole Personal Estate, Goods, Debts and Chattels ; the Administrators, or Executors, after the Debts paid, and Will performed, ought not to take any thing to his or their own Use ; but ought, though there

there be no particular Custom, to divide them, according to this Act: For this Right doth this Statute save by these words, *Saving to his Wife and Children their Reasonable Parts.* And the Administrators shall be allow'd of this Distribution, according to the Statute upon this account, before the Ordinary.

CHAP. XIX.

NO Constable, nor his Bailiff, shall take Corn, or other Chattels, of any Man, if the Man be not of the Town where the Castle is; but he shall forthwith pay for the same, unless the will of the Seller was to respite the Payment: And if he be of the same Town, the Price shall be paid to him within Forty Days.

Stat. 3 E. 1. 7. Alt. 13. Car. c. 8.

Here also, *Constable* is taken for *Castellanus*, as before; and this taking by *Castelleins*, though the Castle was kept for the Defence of the Realm, was an unjust Oppression of the Subject, as appears by the *Mirror*, c. 5. §. 2. No Purveyance shall be taken, but only for the King's and Queen's Houses; and for no other: So that, this Grievance is by this Act taken away.

CHAP. XX.

NO Constable shall distrain any Knight, for to give Money for keeping of his Castle, if he himself will do it in his proper Person, or cause it to be done by another sufficient Man, if he may not do it himself for a reasonable Cause. And if we do lead, or send him in an Army, he shall be free from Castle-Guard, for the time that he shall be with us, in fee in our Host; for the which he hath done Service in our Wars.

Here *Constable* is in the former Sense. See 1. *Instit.* § 96.

This Act is Declaratory of the Common Law: For, first, That he that held by Castle-Gard, that is, to keep a Tower, or a Gate, or such like of a Castle, in Time of War, might do it either by himself, or by any other

sufficient Person for him, and in his Place, Some hold by such Services, that they cannot do it in Person, as Mayor and Commonalty, Dean and Chapter, &c. Infants being Purchasers, &c. Therefore, they might make a Deputy, by Order of the Common Law.

Secondly, If such a Tenant be, by the King, led, or sent to his Host, in Time of War, the Tenant is excused, and quit of his Service for keeping the Castle, either by himself or another, during the Time that he so serve the King in his Host: For, when the King commands his Service in the Host, he dispences with that, by reason of his Tenure; for one Man cannot serve in Person, in two Places.

CHAP. XXI.

NO Sheriff, nor Bailiff of ours, nor any other, shall take the Horses or Carts of any Man, to make Carriage, unless he pay the old Price limited; that is to say, for Carriage with two Horses, Ten pence a day; for three Horses, Fourteen pence a day. No Demesne Cart of any Ecclesiastical Person, or Knight, or any Lord, shall be taken by our Bailiffs: Nor We, nor our Bailiffs, nor any other, shall take any Man's Wood for our Castles, or other our Necessaries to be done; but by the License of him, whose the Wood is.

Stat. 14 E. 3. 19.

Stat. 25 E. 3. 6.

Stat. 13 Ca. 2. 8:

This *Capter* has Three Branches. 1. Here is set down the antient Hire, for the Carriage of the King. 2. Who are exempted from that Carriage. 3. Concerning Purveyance of Wood.

The Carriage must be for the King and Queen only, and no other. The Hire is certainly expressed, as antiently due; and so declaratory of the Old Law: And it ought to be paid in Hand; for the Words are, *None shall take, &c. unless he pay, &c.* and that by the Day.

2. No demean, or proper Cart, for the necessary Use of any Ecclesiastical Person, or of any Knight or Lord, for or about the demean Lands of any of them, ought to be taken for the King's Carriage; but they are exempted by the antient Law, from such Carriage.

Also, it extends to all Degrees and Orders, of the lesser and greater Nobility.

3. Neither the King, nor any of his Bailies or Ministers, shall take the Wood of any other, for the King's Castles, or other Necessaries to be done; but by the License of the Owner of the Wood. And

This

This Branch, among others, hath been confirmed, and commanded to be put in Execution at Thirty two Sessions of Parliament.

The Common Law hath so admeasured the Prerogative of the King, as he cannot take, nor prejudice the Inheritance of any Man; and a Man hath an Inheritance in his Woods.

CHAP. XXII.

(a) **W**E will not hold the Land of them that be (b) Convict of Felony, but one Year, and one Day; and then those Lands shall be delivered to the Lords of the Fee.

O. N. B. f. 99. *Mirror*, 313.

This appears by *Glanvil*, lib. 7. cap. 17. fol. 59. to be due to the King, by his Antient Prerogative.

This Chapter expressees that which belongs to the King, viz. the Year and the Day: and omits the waste, as not belonging to him.

(a) If there be Lord, Mesne and Tenant, and the Mesne is attainted of Felony, the Lord *Paramount*, shall have the Mesnalty presently. For this Prerogative belonging to the King, extends only to the Land which might be wasted, in lieu whereof the Year and Day was granted.

This is to be understood, when a Tenent in Fee-simple is attainted; for where Tenent in Tail, or for Life, is attainted, there the King shall have the Profits of the Land, during the Life of Tenent in Tail, or of the Tenent for Life.

(b) Here *convict* is taken for *attainted*; for the nature and true sence of both these words, see 1. *Instit.* § 745. and likewise for the word Felony there.

CHAP. XXIII.

ALL (a) Wears from hence-forth, shall be utterly put down by Thames and Medway, throughout all England, but only by the Sea Coasts.

Stat. 12 E. 4. 7.

The Latin word is *Kidelli*, Kidels, which is a proper word for open (a) Wears whereby Fish are Caught.

It was especially given in charge by the Justices in Elr, that all Juries should inquire, *de his qui piscantur cum Kidellis & Skarkellis*.

And *Glanvil* says, this pourpresture was forbidden by the Common Law.

Every publick River or Stream is the King's High Way, *Glanvil, lib. 9. cap. 11.*

Pourpresture signifies a Close or Inclosure; that is, when one incroaches or makes that several to himself, which ought to be common to many.

CHAP. XXIV.

THE Writ that is called Prae-
cipe in Capite, shall be from
thenceforth granted to no Person of
any Free-hold, whereby any Free-man
may lose his Court.

O. N. B. fol. 12.

Fitz. N. B. f. 5. f. 39. h.

This is for Reformation of an abuse, and
wrong offered to the Lord, of whom the
Land was holden.

Since this Act, no Man ought to have this
Writ out of the Chancery, upon a suggestion,
that Oath must be made, before it be granted,
that the Land is holden of the King *In ca-*
pit.

There is a great Diversity between a Writ,
and an Action, although by some they are
often confounded. This will appear by their
Definitions.

*Actio nihil aliud est quam ius prosequendi in
iudicio quod alieni debetur.*

Bract.

Brañ. lib. 3. fol. 98. and with him agree
Fleta. Actio nihil aliud est, quam jus prose-
quendi in judicio quod alicui debetur, & quod
nascitur ex maleficio, vel quod provenit ex de-
lictio, vel injuria, lib. 1. cap. 16.

The Mirror saith, that an Action is nothing
 but a lawful demand of one's Right. Advers
 are those who Sue for their Right by plaint.
 Mirror cap. 2. §. 1.

So the first Diversity is, an Action is the
 Right of a Suit, the Writ is grounded there-
 upon, and the mean to bring the Defendant
 or Plaitiff to his Right.

2. A Writ grounded upon Right of Action,
 is ever *in foro contentioso*; but so are not
 all Writs.

Of Writs grounded upon Right of Action,
 some are Criminal, and some Civil or Com-
 mon.

Of Criminal, some are *in personam*, to
 have Judgment of Death; as Writs of Ap-
 peal, of Death, Robbery, Rape, &c. some
 for Judgment of Damage to the Party, Fine
 to the King, and Imprisonment, as Writs of
 Appeal of *Mayhem*, &c.

Of Writs Civil or Common, some be
 real, some personal, and some mixt: And
 of these some be *Original*, which go out of
 Chancery, and some judicial; and the Issue
 out

agreed out of the Court where the Plea Depended.
 some Conditional, as Writs of *Errours*, &c.
 & quod some without Condition. Some return-
 ex de- ble, some not. And all these either war-
 ranting by the Common Law, or grounded
 in some Act of Parliament: See more here-
 in this Chapter, pag. 40.

CHAP. XXV.

ONE Measure of Wine shall be through our Realm; and one Measure of Ale, and one Measure of Corn; that is to say, the Quarter of London: and one Breadth of Dyed-Cloath, Ruffets, and Habergeats, that is to say, Two yards within the Lists. And it shall be of Weights, as it is of Measures.

Stat. 14 E. 3. 12.

Stat. 27 E. 3. 10.

Stat. 8 H. 6. 5.

11 H. 7. 4. 1.

Stat. 17 Car. 1. c. 19.

This, that there should be one Measure, and one Weight through England, is grounded upon the Law of God, *Deut.* 25. 13, 14. And this by Parliament hath often been Enacted, but could never be Effected, so forcive is

Custom

Custom concerning Multitudes, when it hath gotten an Head.

Cloath is the Worthiest and Richest Commodity of this Kingdom; for, divide our Native Commodities Exported into Ten Parts, and that which comes from the Sheeps Backs, is Nine Parts in Value of the Ten, and sets great Numbers of People on Work. For the Breadth and Length of Cloath, see many Statutes made after this Act.

CHAP. XXVI.

NOthing from henceforth shall be given for a Writ of Inquisition, nor taken of him that prayeth Inquisition of Life, or of Member; but it shall be granted freely, and not deny'd.

Stat. 3 E. I. II.

Stat. 13 E. I. 29.

Reg. fol. 133, 134.

Mirror, 314.

This is the Writ *de Odio & atia*, Antiently called *breve de Bono & Malo*, and here of Life and Member, which the Common Law gave to a Man Imprisoned, though for the most odious Cause, for the Death of a Man, for the which without the King's Writ he could not be Bailed; yet the Law favouring the Liberty of a Man from Imprisonment, and that he should not be kept in Prison, till the

the Justices in Eire should come, at which time he was to be Tried, he might Sue out this Writ of Inquisition directed to the Sheriff. In this, Four things are to be Observed.

1. Though the Offence, whereof he was Accused, be such, as that he was notailable by Law, yet the Law did so greatly hate any Man's long Imprisonment, though Accused of a grievous and heinous Crime, that it gave him his Writ for his Relief.

2. If he were Indicted or Appealed thereof, before the Justices in Eire, he could not have this Writ, because it was grounded upon a Surmise, which could not be Received against a matter of Record.

3. Upon this Writ, though he was found Accused *de Odio & atia*, and that he was not Guilty, or that he did the Act, *Se defendendo*, *vel per infortunium*, yet the Sheriff by this Writ had no Authority to Bail him, &c.

4. There was a Mean by the Common Law before Inditement or Appeal, to Protect the Innocent against false Accusation; and to Deliver him out of Prison.

Atia signifies Malice, because Malice is *Acida*, Eager, Sharp and Cruel.

And for further Benefit, and in favour of the Prisoner, this Branch further Enacts, that

he shall have it *gratis*, without Fee, and without Delay, or Denial.

Some say, this Statute extends to all other Judges, and Justices for two Reasons. 1. This is but Declarative of the Common Law. 2. *Ubi lex est specialis, & ratio ejus generalis, generaliter accipienda est.*

CHAP. XXVII.

IF any do hold of Us by (a) Fee-Farm, or by (b) Soccage, or (c) Burgage, and he holdeth Lands of another by Knights Service; we will not have the Custody of his Heir, nor of his Land, which is holden of the Fee of another, by reason of that Fee-Farm, or Soccage, or Burgage. Neither will we have the Custody of such Fee-Farm, Soccage, or Burgage, except Knights-Service be due unto us out of the same Fee-Farm. We will not have the Custody of the Heir, or of any Land, which he holdeth of another by Knight's-Service, by occasion of any Petit-Serjeanty, that any Man holdeth of us by Service, to pay a Rent, an Arrow, or the like.

Rep. 12 Car. 2. c. 24.

(a) *Fee-Farm* properly is, when the Lord, upon the Creation of the Tenancy, reserve to himself, and his Heirs, either the Rent, for which it was let before to Farm, or, at least, a Fourth Part of that Farm-Rent. But

Britton says, that *Fee-Farms* are *Lands beld in Fee, to render for them Tearly the true Value, either more, or less*: and is called a *Fee-Farm*, because a Farm-Rent is reserved upon a Grant in Fee. And Regularly, as it appears by this Act, Lands granted in *Fee-Farm* are holden in *Soccage*, unless an expresse Tenure by Knights Service be Reserved.

(b) *Soccage* is the Service of the Plough and Cart. *Co. Lit.* §. 117.

(c) *Burgage*, signifieth the Service whereby the Burrough is holden. *Co. Lit.* § 162.

This Act, as well concerning Tenures in *Fee-Farm*, *Soccage*, and *Burgage*, as by *petit-Serjeanty*, is Declaratory of the Common Law, and in constant use to this Day. *Glanvil, lib. 7. cap. 9.*

CHAP. XXVIII.

ND (a) Bailiff from henceforth shall put any Man to his open Law, nor to an Oath, upon his own (b) bare saying, without Faithful witness brought in for the same.

(a) By this it appears, that under this word *Bailiff*, in this Act, is comprehended every Justice, Minister of the King, Steward, and Bailiff.

(b) *Simplici loquela sua*. For *Bracton* says, *Vox simplex nec probationem facit, nec presumptionem Inducit*.

Every Wager of Law Countervails a Jury, for the Defendant shall make his Law *De duodecima manu*, viz. an Eleven, and himself. How much, and for what cause the Law respects the Number of Twelve. See first *Instit.* §. 234.

The party himself, when he maketh his Law, shall be Sworn *de fidelitate*, that is directly, or absolutely, and the others, *de Credulitate*, that they believe, that he saith true.

To make his Law, is as much as to say, to take his Oath, &c. and it is so called, because the Law gives him that means by his own Oath to free himself.

CHAP. XXIX.

NO (a) Free-Man shall be (b) taken, or imprisoned, or (c) disseised of his Free-hold, or (d) Liberties, or (e) Free-Customs; or be * Out-Lawed, or † Exiled, or any otherwise Destroyed: Neither will we pass upon him, nor put him into Prison, nor Condemn him, but by (f) Lawful Judgment of his Peers, or by the (g) Law of the Land. (h) We will sell to no Man, We will not deny, or defer to any Man, either Justice or Right.

Stat. 2 E. 3. and

Stat. 5 E. 3, & 9.

Stat. 14 E. 3. 14. 28 E. 3. 3.

Stat. 11 R. 2. 10. 17 Car. 1. 10.

Stat. 37 E. 3. 18.

Stat. 4 H. 7. 12. In fine.

(a) This

(a) This extends to Villeins, saving against their Lord.

Albeit *homo* extends to both Sexes, yet by Act of Parliament it is Enacted and Declared, that this Chapter should extend to Dutcheffes, Countesses, and Baroneffes; but Marchionesses, and Vicountesses are Omitted; but, however are comprehended.

(b) *Taken or Imprisoned.*] Attached and Arrested are comprehended herein. ———
Taken: That is Restrained of Liberty, by Petition, or Suggestion to the King, or his Council, unless by Indictment, or Presentment of Good and Lawful Men, where such Deeds be done.

(c) *Disseised*, i. e. Lands, Tenements, Goods, and Chattels shall not be Seized into the King's Hands, contrary to this great Charter, and the Law of the Land; nor any Disseised of his Lands or Tenements, or Dispossessed of his Goods or Chattels, contrary to the Law of the Land.

* *Out-Lawed.*] i.e. Barred to have the Benefit of the Law.

(d) *Liberties* hath Three Significations.

1. The Laws of the Realm, in which Respect, this Charter is called *Charta Libertatum*.

2. The

2. The Freedoms that the Subjects of *England* have.

3. Signifie, the Franchises and Priviledges, which the Subjects have from the Gift of the King; as the Goods and Chattels of Felons, Out-Laws, and the like; or which the Subject Claims by Prescription, as Wreck, Waif, Stray, and the like.

Generally, all Monopolies are against this Great Charter, because against the Liberty and Freedom of the Subject, and against the Law of the Land.

(e) Of *Customs*, some are general, and some Particular: which see in 1. *Instit.* and *Free* is added, for that the Customs of *England* bring a Freedom with them.

By the Law, &c. none can be † *Exiled*, or Banished out of his Native Country, but either by Parliament, or in Case of Abjuration for Felony, by the Common Law.

This Beneficial Law, is construed Benignly; and therefore, the King cannot send any Subject of *England*, against his will, to Serve him out of this Realm; for that he should be an Exile, and he should *Perdere Patriam*; no, not into *Ireland* against his will, to Serve him as his Deputy.

|| *Destroyed.*] i. e. Fore-judged of Life, or Limb, Disherited or put to Torture, or Death.
Every

Every Oppression against Law, by Colour of any usurped Authority, is a kind of Destruction; and it is the worst Oppression, that is done by Colour of Justice.

Any otherwise Destroyed.] Therefore all things, by any manner of means, tending to Destruction, are Prohibited.

(f) Only a Lord of Parliament of *England*, shall be Tried by his Peers, being Lords of Parliament: and neither Noble-Men of any other Country, nor others that are called Lords, and are no Lords of Parliament, are accounted Peers, within this Statute.

Peers, or Equals.] This is to be understood of the King's Suit.

If a Noble-Man be Indicted for Murther, he shall be Tried by his Peers: But if an Appeal be brought against him, which is the Suit of the Party, there he shall be Tried by an ordinary Jury of Twelve Men, for Two Reasons. 1. Because the Appeal can't be brought before the Lord High Steward of *England*, who is the only Judge of Noble-Men, in case of Treason, or Felony. 2. This Statute extends only to the King's Suit; and that in case of Treason or Felony, or of Misprision of either; or being accessory to Felony before, or after, and not to any other Inferior

Senior Offence : It extends to the Trial it self, whereby he is to be Convicted. A Peer of the Realm may be Indicted of Treason, or Felony, before Commissioners of Oyer and Terminer ; or in the *King's-Bench*, if the Treason or Felony be committed in the County, where the *King's-Bench* sits. He may be also Indicted of Murther, or Man-slaughter, before the Coroner, &c.

If a Noble-Man be Indicted, and can't be found, Process of Out-Lawry shall be awarded against him, *per Legem Terræ* ; and he shall be Out-Law'd, *per Judicium Coronatorum* : but Tried, *per Judicium parium suorum*, when he appears, and pleads to Issue.

By *Lawful Judgment*.] Here Three things are implied.

First, This manner of Trial was by Law, before this Statute.

Secondly, That their Verdict must be Legally given : As,

1. The Lords ought to hear no Evidence, but in the Presence and Hearing of the Prisoner.

2. When they are gone together to consider of the Evidence, they can't send to the High-Steward, to ask the Judges any Questions of Law, but in the Prisoners Hearing : Neither can they, when they are gone together,

ther, send for the Judges, to know any Opinion in Law; but the High-Steward ought to demand it in Court, in the Prisoner's Hearing.

Thirdly, When all the Evidence is given by the King's Council, the High-Steward cannot Collect the Evidence against the Prisoner, or in any sort confer with the Lords, touching their Evidence, in the Prisoner's absence; but he ought to be called to it.

It is called the *Judgment*, and not *Verdict*, of his *Peers*; because the Noble-Men, Returned and Charged, are not Sworn, but give their Judgment upon their Honor and Ligeance to the King.

(g) *The Law of the Land.*] For the true Sense of these Words, see the *Stat. 37 E. 3. c. 8.* where they are rendred, *Without due Process of Law.* This *Chapter* is but Declaratory of the Old Law of England.

By the Law of the Land;] That is, the Law of England: Neither *Lex Regis Angliæ*, lest it might be thought to bind the King only; nor *Lex Populi Angliæ*, lest to bind them only: But that it might extend to all, it is said, *Lex Angliæ.*

The Process of Law is two-fold; viz. by the King's Writ, or by due Proceeding and Warrant, either in Deed, or in Law, without Writ.

In what cases a Man by the Law of the Land may be Taken, Arrested, Attached, or Imprisoned in case of Treason or Felony, before Presentment, Indictment, &c. see the Book, fol. 51, 52. and seeing none can be Taken, &c. but by due Process of Law according to the Law of the Land, these Conclusions hereupon do follow.

1. That a Commitment by Warrant, either in Deed, or in Law is accounted due Process of Law, and by the Law of the Land, as well as by Process by force of the King's Writ.

2. That He, or They, which do Commit, have lawful Authority.

3. That his Warrant, or Mittimus be lawful, in writing, under his Hand and Seal.

4. The Cause must be contained in the Warrant, as for Treason, Felony, &c. otherwise if no cause be, and the Prisoner escape, it is no offence at all: whereas if it be contained, the escape were Treason or Felony, though he were not guilty of the Offence.

5. It ought to have a lawful conclusion, viz. and him safely to keep until he be delivered by Law, &c. and not until the party committing doth further Order.

Imprisonment does not only extend to false Imprisonment and unjust; but for detaining

taining the Prisoner longer than he ought where at first he was lawfully Imprisoned.

All Commissions consonant to this Act, are said to be *secundum legem & Consuetudinem Angliæ*.

No man is to be Arrested or Imprisoned contrary to the form of this great Charter.

If a man be Imprisoned contrary to the Law of the Land, he hath these remedies.

1. Every Act of Parliament made against Injuries, &c. doth either expressly, or impliedly, give a remedy to the party wronged, as in many of the *Chap.* of this Great Charter appears, and therefore he may have an account grounded upon this great Charter.

2. He may cause him to be Indicted upon this Statute at the King's Suit.

3. He may have an *Habeas Corpus* out of the *King's Bench* or *Chancery*, though there be no Priviledge, &c. or in the *Common-Pleas*, or *Exchequer*, for any Officer or priviledged Prisoner there.

4. He may have an action of false Imprisonment.

5. He may have a Writ *de homine replegiando*.

6. He might by the Common Law have had a Writ *de odio & atia*, as you may see in *Cap. 26.* but that was taken away by Statute;

tute, but now is revived again by Statute.
42 E. 3. Cap. 1.

(b) *We will sell to none.*] This is spoke in the Person of the King, who in judgment of Law, in all his Courts of Justice is present, and repeating these words, *Nulli vendemus*, &c.

And therefore every Subject of this Realm, for injury done to him *in bonis, terris, vel persona*, by another Subject whomsoever, may take his remedy by course of Law, and may have justice for the injury done to him, freely without sale, fully without any denial, and speedily without delay; these Three qualities make it Justice and Right.

We will not deny or defer to any man, &c.] By no means must Common Right, or Common Law, be disturbed or delayed; no, though commanded under the great Seal, or privy Seal, Order, Writ, Letters, Message, or Command whatsoever, either from the King, or any other.

For the Law is the surest Sanctuary a man can take, and the strongest Fortress to protect the weakest of all. But the King may stay his own Suit, as a *capias pro fine*, for he may respite His Fine, or the like.

All Protections not Legal, that appear not in the Register, nor warranted by our Books,

are expressely against this branch, *we will not defer to any man.*

Justice or Right.] Neither the end, which is justice, nor the mean, whereby we may attain to the end, and that is the Law, *Right* is taken here for Law, as *Jus* is often so called.

1. Because it is the right line, whereby justice distributive is guided and directed; and therefore all Commissions of Oyer and Terminer, of Goal delivery, of the Peace, &c. have this Clause, *faciuri quod ad justitiam pertinet secundum legem & Consuetudinem Anglie*, you shall do Justice and Right, according to the Rule of the Law, and Custom of England.

2. Because the Law discovers that which is crooked, or wrong. *Recta linea est Index sui, & obliqui*,

3. It is called Right, because it is the best Birth-Right the Subject hath; for thereby his Goods, Lands, Wife, Children, Body, Life, Honors and Estimation, are Protected from Injury and Wrong.

4. It is taken for Right it self, that a man hath by Law to Land, as in a *breve de recto*.

CHAP. XXX.

ALL Merchants unless they were openly prohibited before, shall have their safe and sure Conduct, to depart out of, and to come into England; and to tarry in, and go thorow England, as well by Land, as by Water; to Buy and Sell, without any manner of (a) Evil Tolls, by the Old and Rightful Customs, unless in time of War. And if they be of a Land making War against us, and be found in our Realm at the beginning of the Wars, they shall be attached without harm of their Bodies or Goods; until it be known unto us, or our Chief Justice, how our Merchants be Treated there in the Land making War against us. And if ours be safe There, Theirs shal be so with us.

Stat. 9 E. 3. 1. 14 E. 3. 22. Sess.

25 E. 3. 2. 2 R. 2. 1. 11 R. 2. 7.

This Chapter concerns Merchant-Strangers. And,

1. Before this Statute, they might be publickly prohibited. And this Prohibition is intendable of Merchant-Strangers in Amity; for this Act afterwards provides for them being Enemies.

This Prohibition must be by the Common Council of the Realm, the Parliament.

2. That all such in Amity (unless so publickly prohibited,) shall have safe Conduct.

1. To go out of.
2. To come into.
3. To tarry in.
4. To go in, and through *England*, both by Land and Water.
5. To buy and sell.
6. Without any manner of evil Tolls.
7. By the old and rightful Customs.

For Merchant-Strangers, whose Sovereign is in War with the King of *England*, for those found in the Realm when the War begins, shall be attached with a privilege and limitation not to have harm, &c. until known to us, or, &c. i. e. our Guardian or Keeper of the Realm in our absence, how ours there in the Land, in War with us are dealt with: if ours are well, theirs shall be so here; for this is *jus belli*. But

But for those that come after the War is begun, they may be treated as open Enemies.

The end of this Chapter, was for promoting Trade and Traffick.

(a) *Tolls.*] Signifie any manner of Custom, Subsidy, Prestation, Imposition, or sum of money demanded for exporting or importing of any Wares, or Merchandizes to be taken of the buyer.

Evil Tolls.] When the thing demanded for Wares, do so burthen the Commonalty, as the Merchant can't have a convenient gain by trading therewith, and thereby the Trade it self is lost or hindred.

By the old and rightful Customs.] *i. e.* by antient and right Duties, due by antient and lawful Custom, they have a speedy recovery, for their Debts and other Duties, &c. *Per legem mercat.* which is a part of the Common Law.

Custom hath all these Significations. 1. The Common Law. 2. Statute Law. 3. Particular Customs, as Gavel kind, &c. 4. Rents, Services, &c. due to the Lord. 5. Customs, Tributes or Impositions. 6. Subsidies or Customs granted by common Consent, *i. e.* Authority of Parliament, *pro bono publico*; and these are *antient and rightful Customs* intended by this Act.

It hereby appears, that the King can't set a new Impost on the Merchant: and herewith agreeth the Act commonly called *Confirmationis Chartarum* (which is but explanatory of this branch of *Magna Charta*) wherein 'tis Enacted, That for no occasion, any aid, tasks, or takings, shall be taken by the King or his Heirs, but by the common Consent of the Realm, saving the antient Aids and Takings due and accustomed.

The Statute, *de tallagio non concedendo* is explanatory of this Branch, *Anno 34 E. 1.*

No charge shall be Levied on the People, if not granted in Parliament.

The Lords and Commons cannot be charged with any thing for the defence of the Realm, safeguard of the Sea, &c. unless by their will in Parliament; *that is, in grant of a Subsidy whereunto the King assented.*

CHAP. XXXI.

IF any Man hold of any Escheat, as of the Honor of Wallingford, Nottingham, Boloin, or of any other Escheats, which be in our Hands, and are Baronies, and Dye; his Heir shall give no other Relief, nor do no other Service to us, than he should to the Baron, if it were in the Baron's Hands. And We, in the same manner, shall hold it, as the Baron held it: Neither shall we have, by occasion of any Barony or Escheat, any Escheat or Keeping of any of our Men, unless he that held the Barony, or Escheat, otherwise held of us in Chief.

Register, fol. 184.

Stat. 1 E. 3. 13.

Stat. 1 E. 6. 4.

All this is meerly Declaratory of the Common Law; and here it appears, that he that

holds of the *King*, must hold of the Person of the *King*, and not of any Honor, Barony, Mannors, or Seignory: and he that holdeth of the *King* in chief, must not only hold of his Person, but the Tenure must be Created by the *King*, or some one of his Predecessors, *Kings* of this Realm, to defend his Person and Crown.

Bracton, who wrote soon after the Statute, expounds this *great Charter* to extend to Forfeiture of *Baronies* for Treason, as of the *Normans*, *Bract. l. 2. f. 87. b.*

By this Chapter it appears, that a Subject may have an Honor.

CHAP. XXXII.

NO Freeman from henceforth, shall give or sell any more of his Land, than that of the Residue of the Lands, the Lord of the Fee may have the Services due to him, which belongeth to the Fee.

Stat. 18 E. 1. Quia Emptores terrarum.

Mirror, 316.

At the Common Law, the Tenant might have made a Feofment of the whole Tenancy to be holden of the Lord; for that was no prejudice at all to the Lord.

But in the *King's* Case it was doubted whether his Tenant might have given part of the Tenancy to hold of himself; because the Land, and the profit that might come to the King thereby, was removed farther off from him, and the Mesnalty was ever of less value than the Land, and for that cause the Tenancy was called Paravail.

Where

Where Lands are holden of the King as King *in Capite*, be it by Knights-service, or in Soccage *in Capite*, and aliened without Licence, I think the Land is not forfeited to the King, but it should be seized in the Name of a Distress, and a Fine paid for the Trespas: for by the 1 E. 3. c. 12. it is Enacted, that the King shall not hold them as forfeit in such case, but that of Lands so aliened, there should be from thenceforth a reasonable fine taken in the Chancery, by due process: which act was but an Exposition of this Chapter, as to Lands holden of the King *in Capite*, aliened without Licence, and extends to Lands holden of the King, by grand Serjeanty aliened *Sans Licence*.

The Fine to be paid by the Alience, or by those that Claimed by or under him, and if the Fine be not paid, the Land to be Seized into the King's Hands.

CHAP. XXXIII.

ALL Patrons of Abbies, who have the King's Charters of England of Advowson, or have Old Tenure or Possession of the same, shall have the Custody of them, when they shall fall Void; as they were wont to have, and as it is aforesaid, in the Fifth Chapter.

This is where the Patron, or Founder of Abbeys, or Priories by special Reservation, Tenure or Custom, ought to have the Custody of the Temporalities of the same, during the Vacation; as many of them formerly had. But if the King be Founder, he ought to have the Temporalities, during the Vacation of common Right, by his Prerogative.

If the King, and a Common Person, join in a Foundation, the King is the Founder, because it is an entire Thing.

If a Common Person found an Abbey, &c. with Possessions of small Value, and the King after Endow it with great Possessions; yet the Common Person is the Founder.

CHAP. XXXIV.

NO Man shall be taken or imprisoned upon the Appeal of a Woman, for the Death of any other, than her Husband.

Rast. Pla. fol. 43.

For the word *Appeal*: It signifies an Accusation; and in legal Signification, is peculiarly applied to Appeals of three sorts. 1. Of Wrong to his Ancestor, whose Heir-Male he is; and that is only of Death. 2. Of Wrong to the Husband, and is by the Wife, only of the Death of her Husband, to be Prosecuted. 3. Of Wrongs done to the Appellants themselves; as Robbery, Rape and Maihem.

At the Common Law, before this Statute, a Woman as well as a Man, might have had an Appeal of Death, of any of her Ancestors; and therefore the Son of a Woman shall have an Appeal at this Day, if he be Heir at the Death of the Ancestor; for the Son is not Disabled, but the Mother only.

Fleta says, *lib. 1. cap. 33. Famina autem de morte viri sui inter brachia sua interfecti, & non aliter poterit appellare.* And so the *Mirror. cap. 5. §. 2.* and *cap. 2. §. 7. Britton and Bracton.*

By *Inter Brachia* is understood, the Wife whom the Dead had Lawfully in Possession at his Death; for she must be his Wife, both of Right, and in Possession.

A Woman at this Day, may have an Appeal of Robbery, because not Restrained.

This Writ of Appeal of the Death, &c. is Annexed to her Widdow-hood, as her Quarentine is.

If she Marry again, her Appeal is gone, though her second Husband Dye within the Year: for when she brings the Appeal, she must be *Famina viri sui*, upon whose Death she brings it.

If she bring the Appeal during Widow-hood, and take Husband, the Appeal shall abate, and be for ever gone. 11 H. 4. 46.

If in her Appeal, she have Judgment of Death against the Defendant, and after take Husband; she can never have Execution of Death against him.

Though her Husband be attainted of High Treason or Felony; yet if he be Slain her Appeal is good; for he was for all the Attainder

tainder *vir suus* ; but the Heir can have none, for the Corruption of the Blood between them.

Appeal of the Woman. An Hermaphrodite, if the Male Sex prevail, shall have an Appeal of Death as Heir ; but if the Female, no Appeal lies for her as Heir.

CHAP. XXXV.

NO (a) County-Court from henceforth shall be holden, but from Month to Month; and (b) where Greater Time hath been used, there shall be greater. (Vid. 2 E. 6.25.) Noz any Sheriff, noz his Bailiff, shall keep his Turn in the Hundred, but twice in the Year; and no where, but in a due and accustomed Place: That is to say, (c) once after Easter; and again, after the Feast of St. Michael. And the (d) View of Frank-Pledge, shall be likewise at the Feast of St. Michael, without occasion. So that, every Man may have his Liberties, which he had, or used to have, in the Time of King Henry, our Grandfather; or which he hath Purchased since. (e) The View of Frank-Pledge shall be so done, that our Peace may be kept; and that the Tything be kept entire, as it hath been accustomed

accustomed; and that the (f) Sheriff
 seek no Occasions; and that he be
 (g) content with that, which the She-
 riff was wont to have, for the ma-
 king of his ~~Chien~~, in the Time of King
 Henry, our Grandfather.

See Marlebridg. chap. 10.

Reg. fol. 175. 187.

Fitz. Nat. Brev. f. 161.

Stat. 31 E. 3. 15.

Curia comitatus is twofold. 1. The Coun-
 ty-Court, the other the Sheriffs Turn, Anti-
 ently called *Folkmoet*; here it is taken in the
 Common Sense for the County-Court.

This is an Affirmance of the Common
 Law, and Custom of the Realm.

(b) *Where greater time.*] This is altered
 by the Statute, 2 E. 6. c. 23. Whereby it is
 provided, that no County-Court shall be
 longer deferred but one Month, from Court
 to Court.

By which Act, every County of England,
 concerning the Time of keeping of the Coun-
 ty-Court, is governed by one and the same
 Law.

Twenty eight Days is to be accounted to a legal Month, in this Case; and not the Kalendar Month.

(c) Where this says, *Once after Easter, &c.* the Statute, 31 E. 3. 15. explains it; viz. one time, within the Month after Easter; and another time, within the Month after St. Michael: And if they hold them in any other manner, then to lose their Tourn for that time, *i. e.* The Court so holden, for that time, shall be utterly void, and the Sheriff lose the Profits of it.

(d) Antiently, the Sheriff had two great Courts; the *Tourn*, and the *County Court*. Afterwards, for the Ease of the People, and especially, the Husbandmen, the *View of Franck-pledge*, or *Leet*, was by the King divided, and derived from the *Tourn*; and granted to the Lords, to have the View of the Tenants and Resiants, which in their Mannors, &c. So that the Tenant, &c. should have the same Justice at their own Doors, without Charge, or Loss of Time, that they had before in the *Tourn*.

So were Hundreds, and Hundred-Courts; divided and derived from the County-Courts: and this the King might do; for the *Tourn*, and the *Leet*, both are the King's Courts of Record. And as the *County-Court*, and *Hun-*

dred-Court, are of one Jurisdiction; so the *Tourn*, and *Leet*, be also of one and the same Jurisdiction: For *Derivativa potestas est ejusdem Jurisdictionis cum Primitiva*.

The Style of the *Tourn*, is *Curia Franc. Plegii Dom. Regis Tent' apud L. coram Vicecomite in Turno suo tali die, &c.* And therefore, in some Books, it is called the *Leet* of the *Tourn*.

He that claims a *Leet* by *Charter*, must hold it at the same Days, which are contained in the *Charter*: And he that claims it by *Prescription*, may claim to hold it once or twice every Year, at any such Days, as shall upon reasonable Warning be appointed; if the Usage has been so to have been kept at uncertain Times, or otherwise, at such certain Days and Times, as by *Prescription* hath been certainly used.

(e) The View of *Frank-Pledge*, was for two Ends:

1. *That our Peace might be kept.*
2. *That the Trything be kept entire.*

That so the Peace might be kept, every Free-Man, at Twelve Years of Age, should in the *Leet*, (if he were in any) or in the *Tourn*, (if not in any *Leet*) take the Oath of Allegiance to the King; and that Pledges, or Sureties, should be found in manner here-after expressed,

expressed, for his Truth to the King, and to all his People ; or else, to be kept in Prison.

This *Frank-Pledge* consisted most commonly of Ten Households, which are here called *Tritbinga*, i. e. *Decemvirale Collegium*, whereof the Masters of the Nine Families, who by the Saxons were called *Freoborgh*, i. e. free surety, or Frank-Pledge, and the Master of the Ten Households *Theothungmon*; and in the West at this Day *Tytthingman*, i. e. *Capitalis Plegius*, Chief-Pledge ; and these Ten Masters were bound one for another's Family, that each Man of their several Families should stand to the Law ; or, if not forth coming, that they should Answer for the Injury by him Committed.

The Princinct of this *Frank-Pledge* was called *Decenna*, and every Man of the several Households, *Decennarii*.

The *Trything kept intire* ; That is, That every particular Person in the Kingdom, be within some *Decenna* or other, so as he may be brought forth to stand to Right if he shall Offend.

(f) By the Common Law, to avoid all Extortion and Grievances of the Subject ; No *Sheriff*, *Coroner*, *Goaler*, or other of the King's Ministers, ought to take any Reward for doing of his Office, but only of the King.

This appears by our Books ; and by *Stat. W. 1. c. 26.* and a penalty added to the Prohibition of the Common Law, by that Act.

(g) This is to be understood of the Profits of the Court of the *Tourn*, and such only as were accustomed in *H. the Second's* Time.

Note, if any be Grieved contrary to the Purview of this Act, he may, for his Relief therein, have an Action upon this Statute, though no Action be expressly given.

CHAP. XXXVI.

Neither shall it be Lawful, from henceforth, for any, to give his Lands to any Religious-House; and to take the same Lands again, to hold of the same House. Nor shall it be Lawful, for any Religious-House to take the Lands of any, and to let it to him to hold, of whom he Received it. If any from henceforth, shall so give his Land to any Religious-House; and upon this shall be Convict, his Gift shall be utterly void, and the Land shall fall to the Lord of the Fee.

Vide Stat. de Religiosis. Anno 3 E.1.

It appears by this Chapter, that a Gift of Lands to any Religious-House was Prohibited, though the House gave not the same back again to hold of the same House; but kept the Lands so given to themselves in

their own Hands. And in that Case, that the Land should incur to the Lord of the Fee.

There were two Causes of putting in this Chapter.

1. The Services due out of such Fees, and which at first were Created for the Defence of the Realm, were unduly withdrawn.

2. The chief Lords, did lose their Escheats, Wardships, Reliefs, and the like.

It is Wonderful to see how the good Ecclesiastical Fathers trickt upon this Statute; but yet so they did, by getting Ecclesiastical Persons Regular, to purchase Lands holden of themselves, or take Leases for long Term of Years, and many other ways; and Bishops, Parsons, and other Ecclesiastical Persons Secular, took themselves to be out of this Statute.

Well, to remedy this, the Statute *de Religiosis*, 7 E. 1. was made, with as strong words as they could then imagine to Frame: *Quod nullus Religiosus, &c. aut alio quovis modo arte vel ingenio sibi appropriare presumat, sub forisfactura Eorundem*; But they also found out a Loop-hole here, for this Statute extended but to Gifts, Alienations, and other conveyances made between them and others; and they pretended a Title to the Land, (that they meant to get) and so brought a *Præcipe quod reddat*

reddat against the Tenant, and he by consent and collusion should make Default, and so thereupon they to Recover the Land, and enter by Judgment of Law. *Et sic fieret fraus Statuto.*

When this Invention was taken away by *W. 2. c. 33.* they found out another Evasion; for now they would cause the Land to be conveyed by Feoffment, or in any other manner to divers persons and their Heirs, to the use of them and their Successors, by Reason whereof they took the Profits; but this was by the 15 *R. 2. c. 5.* Enacted to be *Mortmain*, within the Forfeiture of the said Statute of 7 *E. 1.*

CHAP. XXXVII.

EScuage from henceforth, shall be taken, as it was wont to be in the Time of King Henry our Grandfather.

Escuage signifies the Service of the Shield. Homage and Knight-Service are incident to Escuage; and by the Grant of Services, Escuage passeth with the rest.

Every Tenure by Escuage, is a Tenure by Knights-Service:

CHAP.

CHAP. XXXVIII.

(a) SAVING to all Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons, and all others, as well Ecclesiastical, as Secular Persons; all their Liberties, and Free-Customs, which they had before: (b) And all these Customs, and Liberties aforesaid, which we have granted to be holden in this our Realm, (as much as appertaineth to us) we shall observe towards our Self, and our Heirs. (c) And all Men of this our Realm, as well Spiritual as Temporal, (as much as appertains to their Part) shall observe the same, towards Themselves and Theirs. And for this our Gift, and Grant of these Liberties, and of others contained in our Charter, of the Liberties of our Forest; the Archbishops, Bishops, Abbots, Priors, Earls, Barons,

rons, Knights, Freeholders, and all others of our Realm, have given unto Us, the (d) Fiftenth Part of all their Moveables. Vid. Stat. 7. Anno 25 E. 3.) We have also granted to them, for Us, and our Heirs, that neither (e) We, nor our Heirs, will procure or do any thing, whereby the Liberties contained in this Charter, shall be infringed or weakned. And if any thing be procured by any Person contrary to this, it shall be of no value, and holden for nought. These being Witnesses, Boniface, Archbishop of Canterbury, E. Bishop of London, and others. Given at Westminster, the Tenth Day of February, in the Ninth Year of our Reign.

(a) That is, that the said Liberties, should be whole without Prejudice unto them: This is an Act that they should enjoy them.

Regularly, a *Saving* in an Act of Parliament enlarges not, nor extends to any new thing; but preserves a Right or Interest, that

is prior to things contained in the Act; which by the words of the Act, might have been given away. But this Clause doth enlarge, and extends to all other Liberties, &c. which any Subject whosoever ought to have.

But principally observe, that here is no Saving at all for the King, his Heirs and Successors; to shew that the King, his, &c. against all pretences of Evasions, should be bound by all the Branches of both this, and the other mentioned *Charter* of Forests.

(b) The King has obliged himself, and his Heirs and Successors, as much as Appertained to him or them, to observe, and keep all these Liberties and Customs.

(c) All the Subjects of the Realm have obliged themselves, as much as respects them or theirs, to observe and keep them.

(d) This proves, as the Fifteenth was granted by Parliament, so was this Great *Charter* granted by Authority of the same.

(e) The King granted for him, and his Heirs, never to seek out any thing whereby these Liberties might be broken or weakned. And if by any Man, against this *Charter*, any thing should be sought out, it should be of no value.

And all these Grants are concluded with *His Testibus*. Those that had *His Testibus*, were

were called *Charta*, as was this; and *Charta de Foresta*, &c. those that had *Teste me ipso*, are called Letters Patents.

Here be Witneses to this Great *Charter*, a great Number of Reverend and Honorable Persons; in all Sixty three: of the Clergy, Thirty one, whereof Twelve were Bishops, and Nineteen Abbots. And *Hugh de Burgo*, Chief Justice; and Thirty one Earls and Barons.

Besides it was Established by Authority of Parliament holden at *Westminster*, in Form of a *Charter*: of Acts of Parliaments, in Form of a *Charter*, See the Prince's Case. *Lib. 8. Fol. 19.*

FINIS.

THE
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OF THE
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